

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 09-56915

MELODY LEA DEPEW,

Chapter 7

Debtor.

Judge Thomas J. Tucker

_____ /

ORDER DENYING DEBTOR'S MOTION FOR RECONSIDERATION

This case comes before the Court on Debtor's "Ex Parte Motion to Reinstate Case," filed on June 25, 2009 (Docket # 15, the "Motion"), which this Court construes as a motion for reconsideration of, and for relief from, the June 15, 2009 Order dismissing this case (Docket # 12).

The Court has reviewed and considered the Motion, and finds that the Motion fails to demonstrate a palpable defect by which the Court and the parties have been misled, and that a different disposition of the case must result from a correction thereof. *See* Local Rule 9024-1(a)(3).

In addition, the Court notes the following. First, the Court finds that the allegations in the Motion do not establish excusable neglect under Fed.R.Civ.P. 60(b)(1), Fed.R.Bankr.P. 9024, or any other valid ground for relief from the order dismissing this case.

Second, Debtor admits in her Motion that she did not obtain credit counseling until *after* filing her petition in this case.¹ (Her only credit counseling certificate (Docket # 16), filed on

¹ Debtor's counsel admits in the Motion that he knew, before filing the petition in this case, that the Debtor had not obtained the required credit counseling briefing before her petition was filed. And this was further confirmed to Debtor's counsel on June 1, 2009, when he says he received Debtor's credit counseling certificate, which shows a credit counseling briefing date of June 1, 2009. (Motion at ¶¶ 3-5). These are rather startling admissions, especially given that Debtor's counsel filed, on May 28, 2009, "Exhibit D" which states that the Debtor obtained a

June 25, 2009, 10 days after the dismissal of this case, states that Debtor obtained credit counseling on June 1, 2009; her petition was filed on May 28, 2009.) Debtor therefore is not eligible to be a debtor in this case under 11 U.S.C. § 109(h)(1). That provision provides in relevant part, that

an individual may not be a debtor under this title unless such individual has, **during the 180-day period preceding the date of filing the petition by such individual**, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

(Emphasis added).

11 U.S.C. § 109(h)(3) provides a limited exception to § 109(h)(1)'s requirement of obtaining a credit counseling briefing **before** filing the bankruptcy petition. This exception permits a debtor to obtain the required credit counseling briefing up to 30 days after filing the petition, and upon entry of an order for cause shown, up to 45 days after filing the petition.

Section 109(h)(3)(A) provides:

(3) (A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that--

(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

(ii) states that the debtor requested credit counseling

credit counseling briefing “[w]ithin the 180 days **before the filing of [Debtor’s] bankruptcy case.**” (Docket # 3 at 1, box checked at no. 2, emphasis in original). Debtor signed this document under penalty of perjury on May 28, 2009 (Docket # 3 at 2), and Debtor’s attorney filed it for the Debtor the same day, even though both the Debtor and Debtor’s attorney knew at the time that Debtor’s statement in Exhibit D was untrue.

services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

(iii) is satisfactory to the court.

E.D. Mich. LBR 1007-6(a) provides the procedure that a debtor must use when filing a certificate of exigent circumstances under § 109(h)(3)(A):

(a) Certification Procedures. A debtor who files a certification under § 109(h)(3)(A) shall also file a motion for approval of the certification. The debtor shall file the certification and the motion with the petition, serve it on all parties and file a certificate of service. The deadline to file a response shall be 10 days after service. If no timely response is filed, the certification shall be deemed satisfactory under § 109(h)(3)(A)(iii) without a hearing or further order. The motion shall be accompanied by a notice that the deadline to file a response is 10 days after service and that if no response is filed, the court will deem the certification satisfactory under § 109(h)(3)(A)(iii) without a hearing.

In this case, Debtor failed to comply with the requirements of both § 109(h)(3)(A) and LBR 1007-6, because Debtor did not file a certificate of exigent circumstances, and did not file a motion for approval of her certification of exigent circumstances (timely or otherwise), as required by LBR 1007-6(a).

For these reasons, the Debtor was required to meet the requirement of 11 U.S.C. § 109(h)(1), that she obtain credit counseling *before* filing her bankruptcy petition, in order to be eligible to be a debtor in this case. Debtor did not meet this requirement. For these reasons, Debtor is not eligible to be a debtor in this case under 11 U.S.C. § 109(h)(1), and this case cannot be reinstated.

Accordingly, for these reasons,

IT IS ORDERED that the Motion (Docket # 15), is DENIED.

Signed on June 26, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge